

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

CHAPTER XLV

HOMICIDE

750.316 First degree murder; penalty; definitions.

Sec. 316. (1) A person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life:

(a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.

(b) Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, or vulnerable adult abuse in the first and second degree under section 145n.

(c) A murder of a peace officer or a corrections officer committed while the peace officer or corrections officer is lawfully engaged in the performance of any of his or her duties as a peace officer or corrections officer, knowing that the peace officer or corrections officer is a peace officer or corrections officer engaged in the performance of his or her duty as a peace officer or corrections officer.

(2) As used in this section:

(a) "Arson" means a felony violation of chapter X.

(b) "Corrections officer" means any of the following:

(i) A prison or jail guard or other prison or jail personnel.

(ii) Any of the personnel of a boot camp, special alternative incarceration unit, or other minimum security correctional facility.

(iii) A parole or probation officer.

(c) "Major controlled substance offense" means any of the following:

(i) A violation of section 7401(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401.

(ii) A violation of section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7403.

(iii) A conspiracy to commit an offense listed in subparagraph (i) or (ii).

(d) "Peace officer" means any of the following:

(i) A police or conservation officer of this state or a political subdivision of this state.

(ii) A police or conservation officer of the United States.

(iii) A police or conservation officer of another state or a political subdivision of another state.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.316;—Am. 1969, Act 331, Eff. Mar. 20, 1970;—Am. 1980, Act 28, Imd. Eff. Mar. 7, 1980;—Am. 1994, Act 267, Eff. Oct. 1, 1994;—Am. 1996, Act 20, Eff. Apr. 1, 1996;—Am. 1996, Act 21, Eff. Apr. 1, 1996;—Am. 1999, Act 189, Eff. Apr. 1, 2000;—Am. 2004, Act 58, Eff. June 11, 2004.

Constitutionality: This section, which provides a mandatory life sentence for first degree murder, does not violate constitutional guarantees of due process and equal protection or the guarantee against cruel and unusual punishment. *People v. Hall*, 396 Mich. 650, 242 N.W.2d 377 (1976).

The use of common-law definition of rape in this section, until it was amended by Act No. 28 of the Public Acts of 1980, does not violate the equal protection clause. *People v. McDonald*, 409 Mich. 110, 293 N.W.2d 588 (1980).

In *People v. Gay*, 407 Mich. 681, 289 N.W.2d 651 (1980), the Michigan supreme court held that the prosecution of defendants under this section subsequent to their convictions in federal court for the same acts is limited by the double jeopardy clause of the Michigan constitution.

In *People v. Wilder*, 411 Mich. 328, 308 N.W.2d 112 (1981), the Michigan supreme court held that conviction and sentence for both first-degree felony murder and the underlying felony of armed robbery violates the state constitutional prohibition against double jeopardy.

A mandatory life sentence imposed for conspiracy to commit first-degree, even if nonparolable, is not so excessive as to constitute cruel and unusual punishment; nor does it violate the Equal Protection Clauses of the Michigan and United States Constitutions. *People v. Fernandez*, 427 Mich. 321, 398 N.W.2d 311 (1986).

Former law: See section 1 of Ch. 153 of R.S. 1846, being CL 1857, § 5711; CL 1871, § 7510; How., § 9075; CL 1897, § 11470; CL 1915, § 15192; and CL 1929, § 16708.

750.317 Second degree murder; penalty.

Sec. 317. Second degree murder—All other kinds of murder shall be murder of the second degree, and shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.317.

Former law: See section 2 of Ch. 153 of R.S. 1846, being CL 1857, § 5712; CL 1871, § 7511; How., § 9076; CL 1897, § 11471; CL 1915, § 15193; and CL 1929, § 16709.

750.317a Delivery of schedule 1 or 2 controlled substance; death as felony; penalty.

Sec. 317a. A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person in violation of section 7401 of the public health code, 1978 PA 368, MCL 333.7401, that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years.

History: Add. 2005, Act 167, Eff. Jan. 1, 2006.

750.318 Degree of murder; determination; testimony, open court, transcript.

Sec. 318. The jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but, if such person shall be convicted by confession, the court shall proceed by examination of witnesses to determine the degree of the crime, and shall render judgment accordingly. All testimony taken at such examination shall be taken in open court and a typewritten transcript or copy thereof, certified by the court reporter taking the same, shall be placed in the file of the case in the office of the county clerk.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1947, Act 295, Eff. Oct. 11, 1947;—CL 1948, 750.318.

Former law: See section 3 of Ch. 153 of R.S. 1846, being CL 1857, § 5713; CL 1871, § 7512; How., § 9077; CL 1897, § 11472; CL 1915, § 15194; and CL 1929, § 16710.

750.319 Death as result of fighting duel.

Sec. 319. Death as result of fighting a duel—Any person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, fight a duel without the jurisdiction of this state, or who shall fight a duel within this state, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured shall afterwards die within this state, shall be guilty of murder of the first degree within this state, and may be indicted, tried and convicted in the county where such death shall happen.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.319.

Former law: See section 4 of Ch. 153 of R.S. 1846, being CL 1857, § 5714; CL 1871, § 7513; How., § 9078; CL 1897, § 11473; CL 1915, § 15195; and CL 1929, § 16711.

750.320 Seconds in duels resulting in death.

Sec. 320. Seconds in duels resulting in death—Any person, being an inhabitant or resident of this state, who shall be the second of either party in such duel as is mentioned in the next preceding section, and shall be present as a second when such mortal wound is inflicted, whereof death shall ensue within this state, shall be deemed to be an accessory before the fact to the crime of murder in this state, and may be indicted, tried and convicted in the county where the death shall happen, or in which such wound shall have been inflicted.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.320.

Former law: See section 5 of Ch. 153 of R.S. 1846, being CL 1857, § 5715; CL 1871, § 7514; How., § 9079; CL 1897, § 11474; CL 1915, § 15196; and CL 1929, § 16712.

750.321 Manslaughter.

Sec. 321. Manslaughter—Any person who shall commit the crime of manslaughter shall be guilty of a felony punishable by imprisonment in the state prison, not more than 15 years or by fine of not more than 7,500 dollars, or both, at the discretion of the court.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.321.

Former law: See section 10 of Ch. 153 of R.S. 1846, being CL 1857, § 5720; CL 1871, § 7519; How., § 9084; CL 1897, § 11479; CL 1915, § 15201; and CL 1929, § 16717.

750.322 Manslaughter; wilful killing of unborn quick child.

Sec. 322. Wilful killing of unborn quick child—The wilful killing of an unborn quick child by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.322.

Former law: See section 32 of Ch. 153 of R.S. 1846, being CL 1857, § 5742; CL 1871, § 7541; How., § 9106; CL 1897, § 11501; CL 1915, § 15223; and CL 1929, § 16739.

750.323 Manslaughter; death of quick child or mother from use of medicine or instrument.

Sec. 323. Death of quick child or mother from use of medicine, etc., with intent to destroy such child—Any person who shall administer to any woman pregnant with a quick child any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such

child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, be guilty of manslaughter.

In any prosecution under this section, it shall not be necessary for the prosecution to prove that no such necessity existed.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.323.

Former law: See section 33 of Ch. 153 of R.S. 1846, being CL 1857, § 5743; CL 1871, § 7542; How., § 9107; CL 1897, § 11502; CL 1915, § 15224; and CL 1929, § 16740.

750.324 Negligent homicide; penalty.

Sec. 324. Any person who, by the operation of any vehicle upon any highway or upon any other property, public or private, at an immoderate rate of speed or in a careless, reckless or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than \$2,000.00, or by both such fine and imprisonment.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1947, Act 162, Eff. Oct. 11, 1947;—CL 1948, 750.324;—Am. 1965, Act 38, Eff. Mar. 31, 1966.

Former law: See section 1 of Act 98 of 1921, being CL 1929, § 16743.

750.325 Negligent homicide; manslaughter where due to operation of motor vehicle.

Sec. 325. The crime of negligent homicide shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the crime of manslaughter, it may render a verdict of guilty of negligent homicide.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.325;—Am. 1965, Act 38, Eff. Mar. 31, 1966.

Former law: See section 2 of Act 98 of 1921, being CL 1929, § 16744.

750.326 Immoderate speed not dependent on legal speed.

Sec. 326. Immoderate speed not dependent on legal rate of speed—In any prosecution under the 2 next preceding sections, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.326.

Former law: See section 3 of Act 98 of 1921, being CL 1929, § 16745.

750.327 Death due to explosives.

Sec. 327. Death due to explosives—No person shall order, send, take or carry, or attempt to order, send, take or carry dynamite, nitro-glycerine or any other explosive substance which explodes by concussion or friction, concealed in any bag, satchel, valise, trunk, box or in any other manner, either as freight or baggage, on any passenger boat or vessel, or any railroad car or train of cars, street car, motor bus, stage or other vehicle used wholly or partly for carrying passengers.

In case any person violates any of the provisions of this section, he, and any consignee to whom any such dynamite, nitro-glycerine, or other explosive substance has been consigned by his procurement in violation of any of the provisions hereof, shall be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years, in case such dynamite, nitro-glycerine or other explosive substance explodes and destroys human life while in possession of any carrier or on any boat, vessel, railroad car, street car, motor bus, stage or other vehicle contrary to any of the provisions hereof.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.327.

750.327a Sale of explosives to minors.

Sec. 327a. A person who sells or furnishes to a minor, without first having procured the written consent of the parent or guardian of the minor, any bulk gunpowder, dynamite, blasting caps or nitroglycerine is guilty of a misdemeanor.

History: Add. 1961, Act 12, Eff. Sept. 8, 1961;—Am. 1972, Act 32, Imd. Eff. Feb. 19, 1972.

750.328 Death due to explosives; placed with intent to destroy building or object.

Sec. 328. Death from explosives placed with intent to destroy, etc., building or object—Any person who with intent to destroy, throw down or injure the whole or any part of any building or object, places or causes to be placed in, upon, under, against or near such building or object any gun powder or other explosive substance which upon explosion causes the death of any person, shall be guilty of a felony, punishable by

imprisonment in the state prison for life or any term of years.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.328.

750.329 Discharging firearm pointed or aimed at another person resulting in death; manslaughter; exception; "peace officer" defined.

Sec. 329. (1) A person who wounds, maims, or injures another person by discharging a firearm that is pointed or aimed intentionally but without malice at another person is guilty of manslaughter if the wounds, maiming, or injuries result in death.

(2) This section does not apply to a peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer. As used in this section, "peace officer" means that term as defined in section 215.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.329;—Am. 2005, Act 303, Imd. Eff. Dec. 21, 2005.

750.329a Intent to assist individual in suicide; prohibited conduct; felony; exception; effect of common law offense.

Sec. 329a. (1) A person who knows that an individual intends to kill himself or herself and does any of the following with the intent to assist the individual in killing himself or herself is guilty of criminal assistance to the killing of an individual, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both:

(a) Provides the means by which the individual attempts to kill himself or herself or kills himself or herself.

(b) Participates in an act by which the individual attempts to kill himself or herself or kills himself or herself.

(c) Helps the individual plan to attempt to kill himself or herself or to kill himself or herself.

(2) This section does not apply to withholding or withdrawing medical treatment.

(3) This section does not prohibit a prosecution under the common law offense of assisting in a suicide, but a person shall not be convicted under both this section and that common law offense for conduct arising out of the same transaction.

History: Add. 1998, Act 296, Eff. Sept. 1, 1998.